

FILED

UNITED STATES COURT OF APPEALS

JAN 07 2013

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

DAVID OSTER; et al.,

Plaintiffs - Appellees,

v.

JOHN WAGNER, Director of the
California Department of Social Services;
et al.,

Defendants - Appellants.

No. 09-17581

D.C. No. 4:09-cv-04668-CW

ORDER

Appeal from the United States District Court
for the Northern District of California
Claudia Wilken, Chief District Judge, Presiding

Argued June 15, 2010
Re-Submitted January 7, 2013
San Francisco, California

Before: O'SCANNLAIN, TASHIMA, and BEA, Circuit Judges.

This case is resubmitted as of the filing date of this order. Defendants-Appellants appeal the district court's order preliminarily enjoining the State of California from implementing "ABX4 4." *See* California Welfare and Institutions Code §§ 12309(e) & 12309.2. The panel finds that in light of California's suspension statute, *see* California Welfare and Institutions Code §§ 12309(i) & 12309.2(e), this appeal no longer presents a "live controversy" amenable to federal

court adjudication because the panel can no longer grant effective relief. *Log Cabin Republicans v. United States*, 658 F.3d 1162, 1166 (9th Cir. 2011) (citation omitted). Although the district court preliminarily enjoined the State of California from implementing ABX4 4 until a final judgment is reached on the merits, the suspension statute prevents the State from implementing ABX4 4 until the courts uphold the validity of ABX4 4. *See* California Welfare and Institutions Code §§ 12309(i) & 12309.2(e). Thus, the district court's preliminary injunction no longer has any practical effect. We also find that Defendants-Appellants' appeal of the district court's order holding them in contempt for violating the preliminary injunction order is moot, given that Plaintiffs-Appellees have since waived their right to recover the attorney's fees and costs awarded by the district court as contempt sanctions.

Accordingly, we dismiss this appeal as moot and follow the "established practice" in the federal system of vacating the judgment below, here the district court's order granting Plaintiffs-Appellees' motion for a preliminary injunction and the district court's contempt order. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 71 (1997) (citation omitted).

This appeal is dismissed and the case is remanded for further proceedings not inconsistent with this decision. The parties shall bear their own costs. All pending motions are denied as moot. **DISMISSED.**